

LFC Requester:**Theresa Rogers****AGENCY BILL ANALYSIS
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****LFC@NMLEGIS.GOV***and***DFA@STATE.NM.US***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*Original ☒ Amendment ☐
Correction ☐ Substitute ☐**Date** January 25, 2016**Bill No:** HJR 14**Sponsor:** Rep. Antonio "Moe" Maestas**Agency Code:** 305**Short** Transfer Probation to**Person Writing** Anne Kelly**Title:** Judicial Branch, CA**Phone:** 505-222-9054 **Email** akelly@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

BILL SUMMARY

This joint resolution seeks to amend the New Mexico Constitution to add a new section to transfer the administration of adult probation services from the executive branch to the judicial branch.

Synopsis:

This joint resolution proposes to amend Article 6 of the New Mexico Constitution by adding a new section reading: "The judicial branch shall administer the adult probation services for the state, as provided by law." Presumably, the intent of the amendment is to streamline the probation department by having the persons responsible for monitoring probation – the probation officers – in the same branch as the persons responsible for enforcing or revoking probation – the district court judges.

Currently, the department is under the auspices of the New Mexico Department of Corrections (NMDC). According to NMDC's website – available at <http://cd.nm.gov/> - as of January 25, 2016, there are 17,216 offenders on probation or parole.

FISCAL IMPLICATIONS

Presumably, this amendment would have fiscal implications as it would involve the wholesale transfer of the probation system from the executive to the judicial branch. There are branches of the department in every judicial district in the state.

SIGNIFICANT ISSUES

Currently, under our statutes, probation and parole officers are governed by the same statutes. *See* NMSA 1978 §§ 31-21-1 to 31-21-27, collectively "The Probation and Parole Act." Under its terms, the director is to "provide probation and parole services and supervise probationers and parolees." Section 31-21-7(A). Commonly, in our case law, these officers are referred to as APPOs (Adult Probation and Parole officers). *See e.g. State v. Leon*, 2013-NMCA-011, 292 P.3d 493. This amendment does not clarify how it would affect officers who also supervise parolees.

The Parole Board Act, contained within the Probation and Parole Act, is presumably not

part of this amendment. *See* NMSA 1978, §§ 31-21-22 to 31-21-26 (1975). Under this Act, the parole board is a professional board comprising 15 members who are appointed by the governor with the consent of the senate. Members of the parole board “may be removed by the governor as provided in Article 5, Section 5 of the Constitution of New Mexico.” Section 31-21-24(C). This board is responsible for granting, denying, or revoking parole and adopting written policies specifying the criteria by which it makes its decisions. *See also* NMSA 1978, § 31-1-3 (1969) (“It is the purpose of the legislature to create a single, unified corrections department to administer all laws and exercise all functions formerly administered and exercised by the penitentiary of New Mexico and the state board of probation and parole except to the extent delegated to the parole board by the Parole Board Act.”).

Currently, within the Corrections Act – NMSA 1978, §§ 33-1-1 to 33-1-9 (1969), probation officers “shall have the power of a peace officer with respect to arrests and enforcement of laws when on the premises of a New Mexico correctional facility or while transporting a person committed to or under the supervision of the corrections department; when supervising any person committed to or under the supervision of the corrections department anywhere within the state; or when engaged in any effort to pursue or apprehend any such person. No correctional officer or other employee of the corrections department shall be convicted or held liable for any act performed pursuant to this section if a peace officer could lawfully have performed the same act in the same circumstances.” Section 33-1-10. It is unclear if the probation officers would have the same freedom from liability if acting under the auspices of the courts.

Finally, a possible complication would be communications between the probation officer and the court without the involvement of the attorneys. It would not be advisable for courts to speak directly with probation officers, and formulate contracts for probationers, without the involvement of the attorneys. Moreover, the court is to make a determination, based upon the evidence presented which may include testimony of the probation officer, that the probationer violated his probation. The State must establish the probation violation with a reasonable certainty. *State v. Sanchez*, 2001-NMCA-060, ¶ 13, 130 N.M. 602. “The proof necessary is that which inclines a reasonable and impartial mind to the belief that a defendant has violated the terms of probation.” *State v. Martinez*, 1989-NMCA-036, ¶ 4, 108 N.M. 604. The proof must be “that which inclines a reasonable and impartial mind to the belief that [the] defendant had violated the terms of probation.” *State v. Pacheco*, 1973-NMCA-155, ¶ 8, 85 N.M. 778. This may be complicated if the probation officer is under the direct authority and supervision of the district court judge.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

The administrative implications are potentially significant as this amendment would require a transfer of resources, including probation officers, supervisors etc., to the judicial branch from NMCD. *See* Section 31-21-7 (lists the duties of the director, including assigning officers to each judicial district, “obtain[ing] office quarters for the staff in each district as necessary”).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo would remain with the adult probation services as part of the executive branch under the auspices of NMCD.

AMENDMENTS